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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,229	01/05/2001	Paul Morris	65008-022	3818

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EXAMINER

SALVATORE, LYNDA

ART UNIT	PAPER NUMBER
1771	7

DATE MAILED: 08/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.	09/673,229	Applicant(s)	<i>[Signature]</i> MORRIS ET AL.
Examiner	Lynda M Salvatore	Art Unit	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 22 May 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-4 and 6-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 8 and 9 is/are allowed.
- 6) Claim(s) 1-4 and 6,7and 10-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                    6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
2. The disclosure is objected to because of the following informalities: The specification does not contain section headings. Appropriate correction is required.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (d) BRIEF SUMMARY OF THE INVENTION.
- (e) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (f) DETAILED DESCRIPTION OF THE INVENTION.
- (g) CLAIM OR CLAIMS (commencing on a separate sheet).
- (h) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-3,6,10,13, and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claims 1 is rejected because the Applicant fails to set forth the method step(s) that “selectively control” the longitudinal extensibility across the width of the composite in such a manner as to permit the composite to assume, or be formed into, a desired shape”. It is not clear to the Examiner if the method limitations recited in claim 12 is how the extensibility is “selectively controlled” or if there is some other *missing* step(s) which “selectively controls” the extensibility. As such, if the extensibility were “selectively controlled” by the method limitations set forth in claim 12, then Claim 1 would still be indefinite because it is unclear to the Examiner how heat and pressure would impart the varying extensibility properties of claims 2 and 3. Therefore, claims 2 and 3 are further rejected for their dependency on claim 1.

6. Claims 2 and 3 are indefinite because it is unclear to the Examiner if the fabric backing material or the interlining (or interlining composite) is selectively controlled.

7. Claims 6 and 10 are indefinite because of the term “indeterminate”. By definition this term is vague, not definite or precisely determined. Therefore, it is unclear to the Examiner what the Applicant means by an “interlining with indeterminate longitudinal dimension”. For

purposes of examination this term will be construed as a having the extensibility in the longitudinal direction.

8. Claim 13 is indefinite because it is not clear to the Examiner what the Applicant considers the “relevant region” with respect to the partially overlapping interlining layers.

9. Claim 13 is further indefinite because the claim further defines the structure of the interlining, rather than setting forth any method limitations to achieve the final product. It is unclear to the examiner if this claim is the “selectively controlling” step referred in claim 1, part of the affixing step also referred in claim 1, or an embodiment of the interlining composite.

10. Claim 14 is indefinite for the same reasons set forth above in section 8.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-4,6,10, and 11 are rejected under 35 U.S.C. 102 (b) as being anticipated by Adamson, US 2,106,334.

The patent issued to Adamson is directed to an elastic waistband (Column 1, lines 18-25). The waistband comprises a stiffening strip of elastic material secured to an inner face (Column 1, lines 18-25). Adamson teaches combining a stiffening element and a lining in the form of a single thickness strip to avoid using a canvas lining strip and a curtain at the inner face of the trousers as previously used (Column 1, lines 25-32 and Column 3, lines 62-67). Adamson further discloses that the stiffening strip, which comprises elastic webbing, has curvature in the direction

of its length (Column 1, lines 32-39 and Figure 2). The desired curvature of the stiffening strip may be achieved by gradually increasing the tension of the elastic warp strands in the direction of the greatest curvature. In other words, the strands positioned towards the upper edge will have a greater degree of tension than those positioned towards the lower edge (Column 3, lines 26-36). Adamson teaches creating regions at the lower and/or upper edges that are non-elastic by omitting elastic strands (Column 2, lines 37-41 and Column 4, lines 39-41). The elastic stiffening strip is affixed to the waistband portion by sewing (Column 3, lines 46-49). Preferably the outer fabric, waistband portion and stiffening strip are elastic, however, it is not essential. Adamson teaches that since the lower edge of the stiffening strip stretches less than the upper edge satisfactory results can be obtained by securing the lower edge of the elastic waistband portion and points along the lower edge of the stiffening strip to an in-elastic outer fabric (Column 4, lines 1-10).

13. Claims 1,2,4,6 and 10-13 are rejected under 35 U.S.C. 102 (b) as being anticipated by D'Ambrosio, US 4,970,728.

The patent issued to D'Ambrosio is directed towards a garment waistband construction (Title). The waistband comprises one flat strip of elastic having upper and lower portions of different stretchability (Abstract). The upper portion comprises longitudinally elastic webbing having rigidity ribbed weave that consists of a series of reinforced vertical ribs (Column 3, lines 65-69 and Column 4, lines 1-5). The lower portions also comprises longitudinally elastic webbing of lower stretch resistance (Column 4, lines 14-20). Suitable elastomeric materials used in the elastic strip may include Lycra, Spandex, or polyester (Column 4, lines 20-21). Figures 4 and 5 depict the waistband construction wherein the fabric material of the waistband is turned

over to form a U-shaped inner flap. D'Ambrosio teaches securing a fusible stretchable non-woven material to the inner lining of the waistband and disposing a strip of elastic stiffening material (Column 3, lines 55-69).

With respect to claims 12 and 13, D'Ambrosio illustrates in figures 4 and 5, the waistband construction comprising the fusible non-woven stretchable material (26) adjacent and overlapping the inner face of the waistband/elastic stiffening material (22) composite. D'Ambrosio further teaches the waistband fabric material is not limited to what is known in the art as stretchable. The elastic strip (30) is positioned adjacent to the fusible non-woven stretchable material thereby forming the waistband composite. Therefore, the limitations set forth in claim 12 would be met by the composite structure of D'Ambrosio since the fusible non-woven web and stiffening material are elastic and the inner face of the waistband fabric material could be non-elastic. With regard to claim 13, the non-woven stretchable material is fusible, therefore it is reasonable to presume that the material is heated to form a secure bond between the inner face of the waistband and the elastic strip.

13. Claims 1 and 12-14 are rejected under 35 U.S.C. 102 (b) as being anticipated by Morris, WO 94/28227.

The published PCT application is directed to a method for treating a woven fabric that includes applying heat and pressure to the fabric in such a manner that the yarn strands substantially "across" the width of the fabric are forced closer together thus imparting generally semi-permanent or permanent "ease" or "stretch" into the fabric (Abstract). Morris discloses providing waistbands incorporating fabrics and linings treated according to the above aforementioned method (Page 5 6<sup>th</sup> paragraph). Morris teaches that imparting stretch to the outer

fabric using the aforementioned method and fusing with adhesive, an interlining or interlining composite, which has the inherent stretch required (Page 3, 3<sup>rd</sup> paragraph). The interlining (s) may include elastic types, woven, woven biased, knitted, non-woven or web adhesives (Page 3, 4<sup>th</sup> paragraph). Morris also teaches further processing the fused lining to provide for a “curtain” finish or be sewn to a pre-formed stretch/bias lining or “lining composite”. In addition Morris teaches the method of forming a lining composite including the steps of subjecting a non-stretch fabric to the heat and pressure treatment discussed above and fusing a suitable interlining thereto (Column 4, paragraph 1).

With respect to claim 14, Morris teaches that tape made from fabric treated according to the aforementioned method would have the desired “stretch” or “ease” built in thereby eliminating the need for biasing (Page 6, paragraph 2).

***Claim Rejections - 35 USC § 102/103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 2-4 and 6 are rejected under 35 U.S.C. 102 (b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Morris, WO 94/28227 as applied to claim 1 above.

Morris lacks an explicit teaching to the limitations of having varying extensibility with respect to the upper and lower edge portions of the fabric, however, it would be reasonable to presume that the heat and pressure treatment taught by Morris inherently imparts or “builds in”

varying extensibility characteristics to the fabric. Support for said presumption is based on the use of like materials and like processes (i.e., heat and pressure treatment) as well as the end use of the final product. Alternatively, Morris teaches applying the fabric treatment method to impart stretchability to provide and “ease” in a wide range of textile elements such as around cuffs, pocket mouths, trouser bottoms and sleeve heads (Page 6, paragraph 2). As such, the presently claimed varying extensibility properties would have been obviously been present as a result of said heat and pressure treatment.

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over D'Ambrosio as applied to claim 13 above, and further in view of Rhode, US 4,244,199.

D'Ambrosio lacks an explicit teaching of using an elastic or ridged tape, however, the patent issued to Rhode discloses a warp knit elastic tape for use in waistband reinforcement composites (Title and Column 1, lines 14-18). Rhode teaches an elastic knit band construction having longitudinal stretch (Column 1, lines 65-68). Rhodes further teaches that the elastic band construction prevents against rolling, twisting, or bending in the garment during use (Column 1, lines 22-25). Therefore, motivated by the desire to provide a more stable waistband construction, it would have been obvious to one having ordinary skill in the art at the time the invention was

made to substitute the elastic stiffening material taught by D'Ambrosio for the elastic tape of Rhode.

*Allowable Subject Matter*

18. Claims 8 and 9 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record does not teach or suggest providing an interlining having varied extensibility by orienting elastic strands of differing deniers progressively across the width or by orienting elastic strands of different densities across the width.

*Conclusion*

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 4332034  
US 3745588  
US 4720874  
US 5483702  
US 3638242  
US 5168581  
US 5675842  
US 3813698

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 703-305-4070. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

I~~s~~ *JJ*  
August 25, 2002



CHERYL A. JUSKA  
PRIMARY EXAMINER